

Exhibit 21

TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP)

UNITED STATES PATENT AND TRADEMARK OFFICE

Fifth Edition, September 2007

Foreword to the Fifth Edition

The Trademark Manual of Examining Procedure (TMEP) may be downloaded free of charge from the United States Patent and Trademark Office (USPTO) website at www.uspto.gov.

The Manual is published to provide trademark examining attorneys in the USPTO, trademark applicants, and attorneys and representatives for trademark applicants, with a reference work on the practices and procedures relative to prosecution of applications to register marks in the USPTO. The Manual contains guidelines for Examining Attorneys and materials in the nature of information and interpretation, and outlines the procedures which Examining Attorneys are required or authorized to follow in the examination of trademark applications.

Trademark Examining Attorneys will be governed by the applicable statutes, the Trademark Rules of Practice, decisions, and Orders and Notices issued by the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, Commissioners, or Deputy Commissioners. Policies stated in this revision supersede any previous policies stated in prior editions, examination guides, or any other statement of Office policy, to the extent that there is any conflict.

Suggestions for improving the form and content of the Manual are always welcome. They should be addressed to:

Commissioner for Trademarks
Attention: Editor, Trademark Manual of Examining Procedure
P.O. Box 1451
Alexandria, Virginia 22313-1451

Mary E. Hannon
Editor

Lynne G. Beresford
Commissioner for Trademarks

SUBSTANTIVE EXAMINATION OF APPLICATIONS

1206.03 Consent of Individual or President's Widow Required

1206.03(a) Consent Must Be Written Consent to Registration

When a name, portrait or signature in a mark identifies a particular living individual, or a deceased president of the United States during the life of his widow, the mark can be registered only if the written consent of the individual, or of the president's widow. The consent must be a written consent to the registration of the identifying matter as a trademark.

Consent to use of a mark does not constitute consent to register. *Krause v. Krause Publications, Inc.*, 76 USPQ2d 1904 (TTAB 2005); *Reed v. Bakers Engineering & Equipment Co.*, 100 USPQ 196, 199 (PTO 1954); *Garden v. Parfumerie Rigaud, Inc.*, 34 USPQ 30, 31 (Comm'r Pats. 1937) (granting petition to cancel registrations of marks that named and portrayed the petitioner, Mary Garden, who, although she had consented to the use of her name and portrait in connection with a particular perfume, had not given written consent to register the marks for perfumes and other cosmetic items. "Permission to use one's name and portrait in connection with a specified item of merchandise falls far short of consent to register one's name and portrait as a trade mark for such merchandise generally.") Consent to register a mark that makes no reference to consent to use is acceptable; the Office has no authority to regulate use of a mark.

Written consents for minors may be given by their guardians.

1206.03(b) Implicit Consent

When a particular individual identified by matter in a mark is also the person who signed the application, then his or her consent to registration will be presumed. *Alford Mfg. Co. v. Alfred Electronics*, 137 USPQ 250 (TTAB 1963), aff'd, 333 F.2d 912, 142 USPQ 168 (C.C.P.A. 1964) ("The written consent to the registration of the mark 'ALFORD' by Andrew Alford, the individual, is manifested by the fact that said person executed the application...."); *Ex parte Dalloux*, 83 USPQ 262, 263 (Comm'r Pats. 1949) ("By signing the application, the applicant here obviously consents....").

The mere incorporation of a business and consent to the business's use of the mark does not constitute implied consent to the *registration* of the mark. *Krause v. Krause Publications, Inc.*, 76 USPQ2d 1904 (TTAB 2005) (Cancellation petitioner did not give implied consent to register when he incorporated the business, sold his stock in the business and pledged his assets to finance expansion and acquisitions, and acquiesced in the corporation's use of the mark for 50 years, where there was no evidence that petitioner expressly stated that the mark was the property of the corporation and petitioner did not agree to refrain from use of the name in any subsequent business); *In re New John Nissen Mannequins*, 227 USPQ 569 (TTAB 1985) (consent to register not implied from appearance of the name

TRADEMARK MANUAL OF EXAMINING PROCEDURE

“John Nissen” in a deed of incorporation of applicant’s predecessor, nor from existence of foreign registrations incorporating the name). *Compare, In re D.B. Kaplan Delicatessen*, 225 USPQ 342, 344 (TTAB 1985) (consent to the use and registration of the mark D. B. KAPLAN’S DELICATESSEN, for restaurant services, found to be implicit in the terms of a “buy-out” agreement that relinquished all property rights in the name and forbade its use by the named party in any subsequent business).

An applicant does not have to submit a new consent if a consent to register is already part of the record in the file of a valid registration for a mark comprised in whole or in part of the same name, portrait or signature for the same goods or services. In this situation, the applicant only has to claim ownership of that existing registration. If an applicant has submitted a consent to register in an application that has not matured to registration, a new consent is not required for pertinent co-pending applications, but the applicant must submit a copy of the consent for each pending application. *In re McKee Baking Co.*, 218 USPQ 287 (TTAB 1983) (applicant’s claim of ownership of a prior registration that includes a consent to register in the record held sufficient for purposes of complying with the consent requirement of the Act); 37 C.F.R. §2.193(a).

See TMEP §813 regarding a statement of consent of a living individual to the registration of his or her name or likeness.

1207 Refusal on Basis of Likelihood of Confusion, Mistake or Deception

Extract from 15 U.S.C. §1052. No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it ... (d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive....

Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), is the statutory basis for a refusal to register due to likelihood of confusion with another mark. Section 2(d) applies to both the Principal and the Supplemental Register.

1207.01 Likelihood of Confusion

In the *ex parte* examination of a trademark application, a refusal under §2(d) is normally based on the examining attorney’s conclusion that the applicant’s mark, as used on or in connection with the specified goods or services, so resembles a *registered* mark as to be likely to cause confusion. (See TMEP

Exhibit 22

**APPLICATION FOR REGISTRATION OF TRADEMARK ON
PRINCIPAL REGISTER ESTABLISHED BY THE ACT OF JULY 5, 1946**

MAY
2
1988
U.S. PATENT & TRADEMARK OFFICE

Trademark: MIYANO and design

Int. Cl. No.: 7

TO THE COMMISSIONER OF PATENTS AND TRADEMARKS:

F4_{IL}(o3)
Miyano Machinery USA Inc.
1940 North Central Avenue
Wood Dale, Illinois 60191

Pint

The above-identified applicant is an Illinois corporation and has adopted and is using the trademark shown in the accompanying drawing for

F3₀₀₇
Machines and machine tools - namely, turning centers, lathes, vertical machining centers and all parts therefor

*7/23
JMB*

and requests that said mark be registered in the United States Patent and Trademark Office on the Principal Register established by the act of July 5, 1946.

The trademark was first used on October 1, 1985; was first used in interstate commerce on October 1, 1985; and is now in use in such commerce.

The mark is used by applying it to product and cartons containing the product and five (5) specimens showing the mark as actually used are presented herewith.

~~██████████~~ "MIYANO" is a Japanese family name and has no particular English translation.

F9 Pint
The applicant is the owner of registration numbers:
1,217,316; 1,217,317 and 1,473,925.

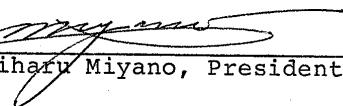
F6_{IL}
Applicant hereby appoints Masaru Funai, Helmut Eifert, Mary W. Shellenberg, Joseph S. Parisi and Nancy E. Sasamoto, members of the Bar of the State of Illinois practicing under the firm name of Masuda, Funai, Eifert & Mitchell, Ltd., 134 North LaSalle Street, Suite 1700, Chicago, Illinois 60602, either individually or collectively, its attorneys with full power of substitution and revocation, to prosecute this application to register, to transact all business in the Patent and Trademark Office in connection therewith, and to receive the certificate of registration.

Nancy E. Sasamoto, whose postal address is Suite 1700, 134 North LaSalle Street, Chicago, Illinois 60602, is hereby designated applicant's representative upon whom notices or processes in proceedings affecting the mark may be served.

Toshiharu Miyano states that he is the President of applicant corporation and is authorized to execute this affidavit on behalf of said corporation; he believes said corporation to be the owner of the trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as to be likely, when applied to the goods of such other person, to cause confusion, or to cause mistake, or to deceive; and the facts set forth in this application are true; and further, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and such willful false statements may jeopardize the validity of the application or document or any registration resulting therefrom.

MIYANO MACHINERY USA, INC.

BY:


Toshiharu Miyano, President

DATED: April 7, 1988, 1988

df/3530



Miyano Machinery USA, Inc.
940 North Central Avenue
Wood Dale, Illinois 60191

725783

| | |
|----------------|----|
| INVENTOR | 7 |
| PRIOR U.S. CL. | 23 |

First Use: October 1, 1985

5709

First Use in Commerce: October 1, 1985

Goods: Machines and machine tools - namely, turning centers, lathes, vertical machining centers and all parts, therefor

Attorneys: Masuda, Funai, Eifert & Mitchell, Ltd.
134 North La Salle Street, Suite 1700
Chicago, Illinois 60602

Miyano

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"REGISTERED"

MAR 07 1989

PAT. & T.M. OFFICE

PUBLISHED

DEC 13 1989

Exhibit 22

Exhibit 22



Exhibit 22

Exhibit 23



MASUDA, FUNAI, EIFERT & MITCHELL, LTD.

TM

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COLIN HARA
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THOMAS MASUDA
(1905-1988)

HJ
SUBURBAN OFFICE
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ROLLING MEADOWS, IL 60008
TELEPHONE (312) 977-9500
TELECOPIER (312) 952-8825

August 8, 1988

The Commissioner of Patents and Trademarks
Washington, D.C. 20231
Box 5

Attention: Law Office Eight,
Trademark Attorney Jerard Rogers

Re: 73/725783 ✓ ✓
Mark: "MIYANO" (STYLIZED)
Applicant: Miyano Machinery USA Inc.
Mailing Date of Office Action: 07/01/88

Dear Mr. Rogers:

In response to your Office Action Number One, dated July 1, 1988 (a copy of which is attached), I am enclosing the executed declaration of Toshiharu Miyano, President of the applicant company. I understand that this executed declaration will be inserted in the file.

With the inclusion of the attached declaration, it is believed that this application is in condition for publication. Favorable action is therefore requested. Please feel free to contact me if you have any questions or require further information.

Very truly yours,

MASUDA, FUNAI, EIFERT & MITCHELL, LTD.

Nancy E. Sasamoto ✓
Nancy E. Sasamoto

NES:df 3508
Enclosure

cc: Miyano Machinery USA Inc.

Exhibit 23

Toshiharu Miyano

(Name of Officer of Corporation)

being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any registration resulting therefrom, declares that the undersigned is

President

(Official Title)

of Applicant corporation and is authorized to execute this instrument on behalf of said corporation; he/she believes said corporation to be the owner of the mark sought to be registered; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use said mark in commerce, either in the identical form or in such near resemblance thereto as may be likely, when applied to the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this application are true; and all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Miyano Machinery USA Inc.

(Name of Corporation)

By

President

(Signature of Officer of Corporation, and
Official Title of Officer)

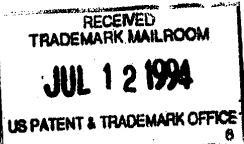
August 3, 1988

(Date)

Exhibit 24

200. - 374

GM



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
POST REGISTRATION SECTION

International Class No.: 7

Owner: Miyano Machinery USA Inc.
Trademark: Miyano and Design
Registration No.: 1,527,809
Registration Date: March 7, 1989

COMBINED DECLARATION UNDER SECTIONS 8 AND 15

TOSHIHARU (TOM) MIYANO declares that he is the CHAIRMAN OF THE BOARD of Miyano Machinery USA Inc. an Illinois corporation, having its principal place of business at 940 North Central Avenue, Wood Dale, Illinois 60191, and is authorized to execute this Declaration on behalf of said corporation; that Miyano Machinery USA Inc. owns the above-identified registration issued on March 7, 1989, as shown by records in the Patent and Trademark Office; that the mark shown herein has been in continuous use in interstate commerce for five consecutive years from the date of the registration to the present on all of the goods specified in the Certificate of Registration:

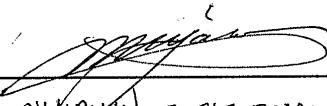
Machines and machine tools - namely, turning centers, lathes, vertical machining centers and all parts therefor
that such mark is still in use in commerce as evidenced by the specimens included herewith showing the mark as currently used on the goods and on point of purchase displays; and there has been no final decision adverse to the Registrant's claim of ownership of such mark for such goods, or to the Registrant's right to register the same or to keep the same on the Principal Register, and that there are no proceedings involving said rights pending and not

disposed of either in the Patent and Trademark Office or in the courts.

I declare further that all statements made herein are true and that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this document and the registration to which it relates.

Registrant hereby appoints Amy L. Kurland, Nancy E. Sasamoto and Joseph S. Parisi, all members of the Bar of the State of Illinois and practicing under the firm name of Masuda, Funai, Eifert & Mitchell, Ltd., One East Wacker Drive, Suite 3200, Chicago, Illinois 60601-1802, either individually or collectively, attorneys for said registrant with full power of substitution and revocation to file this declaration and to transact all business in the Patent and Trademark Office in connection therewith.

MIYANO MACHINERY USA INC.

BY: 

TITLE: CHAIRMAN OF THE BOARD

Print or Type Name and Title:

TOSHIHARU (TOM) MIYANO, CHAIRMAN OF THE BOARD

Dated: JUNE 21, 1994

Exhibit 25

Trademark Trial and Appeal Board Electronic Filing System. <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA182026

Filing date: 12/19/2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | | | |
|----------------------|--|-------------|---------------|
| Name | Mr. Thomas T Miyano | | |
| Entity | Individual | Citizenship | UNITED STATES |
| Address | 50 Dundee Lane Barrington Hills, IL 60010-5106 UNITED STATES | | |
| Attorney information | Vernon W. Francissen 53 W. Jackson Blvd., Suite 1320 Chicago, IL 60604 UNITED STATES vern@francissenpatentlaw.com Phone:312-294-9980 | | |

Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 77176918 | Publication date | 11/20/2007 |
| Opposition Filing Date | 12/19/2007 | Opposition Period Ends | 12/20/2007 |
| Applicant | Miyano Machinery USA Inc. 940 N. Central Avenue Wood Dale, IL 60191 UNITED STATES | | |

Goods/Services Affected by Opposition

Class 037. First Use: 1970/01/01 First Use In Commerce: 1970/01/01
 All goods and services in the class are opposed, namely: Repair and refurbishing services in connection with machines and machine tools, namely, turning centers, lathes, vertical machining centers and all parts therefor

Grounds for Opposition

| | |
|---|---|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
| <i>Torres v. Cantine Torresella S.r.l.Fraud</i> | 808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986) |

Mark Cited by Opposer as Basis for Opposition

| | | | |
|----------------------|---|-----------------------|------------|
| U.S. Application No. | 77351695 | Application Date | 12/13/2007 |
| Registration Date | NONE | Foreign Priority Date | NONE |
| Word Mark | M | | |
| Design Mark | | | |
| Description of | The mark consists of A stylized letter M with bird wings. | | |

| | |
|---------------------|---|
| Mark | |
| Goods/Services | Class 009. First use: Machine Tools, Industry machinery instruments (exclude CNC Lathe/Automatic Lathe, Automatic Tapping Machine), Power machinery instruments, Wind & Water power machinery instruments, Office machinery instruments, other machinery instruments which are not specified above, and machine accessories and elements |
| Related Proceedings | Cancellation no. 92047422 Cancellation no. 92048482 |
| Attachments | 77351695#TMSN.jpeg (1 page)(bytes) Notice_of_Opposition_M_MIYANO_w_design.pdf (3 pages)(76575 bytes) |

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|------------------------------|
| Signature | /s/ Vernon W. Francissen /s/ |
| Name | Vernon W. Francissen |
| Date | 12/19/2007 |

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

U.S. Trademark Application No. 77/176,918: M MIYANO with design

Filing date: May 9, 2007

| | | |
|-------------------------|---|--------------------|
| THOMAS TOSHIHARU MIYANO |) | |
| |) | |
| Opposer, |) | |
| |) | |
| v. |) | Opposition No. TBD |
| |) | |
| MIYANO MACHINERY INC. |) | |
| |) | |
| Applicant, |) | |

NOTICE OF OPPOSITION

Opposer Thomas Toshiharu Miyano, an individual located and doing business at 50 Dundee Lane, Barrington Hills, Illinois, hereby opposes registration of the mark M MIYANO with design that is the subject of U.S. Trademark Application No. 77/176,918 on the grounds that (1) the mark is confusingly similar to a mark currently in use by Opposer; and (2) use of the mark by Applicant was abandoned in 1997 and allowance of the application was, therefore, obtained by fraud on the Trademark Office. In support of the opposition, Opposer alleges as follows:

1. On information and belief, the current owner of the Trademark Application No. 77/176,918 for the mark M MIYANO with design (“the Mark”) is Applicant Miyano Machinery USA Inc.
2. Opposer owns the right to use the following mark in Japan:



3. Opposer has filed Trademark Application no. 77/351,695 to register the mark shown in paragraph 2 in the United States under 15 U.S.C. §1126(e).
4. The Mark as shown in Applicant’s Trademark application no. 77/176,918 includes the mark shown in paragraph 2.
5. The incorporation of Opposer’s mark shown in paragraph 2 into the Mark raises a likelihood of confusion when the Mark is used by Applicant in the services described in Trademark application no. 77/176,918.

6. Accordingly, Applicant's registration of the Mark will be harmful to the Opposer.

7. On information and belief, Applicant's attorney of record George Kobayashi declared in Applicant's Trademark application no. 77/176,918 that Applicant is using the mark in commerce, that the Mark was first used at least as early as January 1, 1970 and first used in commerce at least as early as January 1, 1970.

8. Opposer Thomas Toshiharu Miyano was formerly President of Miyano Machinery Inc., predecessor to Applicant Miyano Machinery USA Inc.

9. On information and belief, Applicant Miyano Machinery USA Inc. and its predecessors abandoned all use of the Mark for any goods or services in 1997.

10. On information and belief, Applicant did not use the Mark in commerce for the services described in Applicant's Trademark application no. 77/176,918 at any time from January 1, 1970, until September of 2006 when Opposer ceased employment with Applicant.

11. Trademark Registration No. 1,217,317, which Applicant claims is a prior registration owned by Applicant in Applicant's application, is the subject of pending Cancellation No. 92047422 for abandonment and fraud.

Count I: Likelihood of Confusion

12. Opposer repeats and re-alleges paragraphs 1-11 as though fully set forth herein.

13. Applicant's Mark so resembles Opposer's mark as to be likely, when applied to the services set forth in Applicant's application, to cause confusion, mistake, or deception within the meaning of Section 2(d) of the Trademark Act.

Count II: Fraud

14. Opposer repeats and re-alleges paragraphs 1-11 as though fully set forth herein.

10. On information and belief, the Mark was not used in connection with the services set forth in Applicant's application from January 1, 1970 to September of 2006.

13. The allegations of use made on behalf of Applicant being knowingly false, the allowance of the Application was obtained through fraud on the Trademark Office.

WHEREFORE, Opposer prays that the opposition be sustained and that registration to Applicant be refused.

Respectfully submitted,

THOMAS TOSHIHARU MIYANO,
Opposer

By: /s/ Vernon W. Francissen /s/
Vernon W. Francissen, Reg. No. 41,762
Attorney for Opposer
FRANCISSSEN PATENT LAW, P.C.
53 W. Jackson Blvd., Suite #1320
Chicago, Illinois 60604
(312)294-9980 telephone
(312)275-8772 facsimile
Customer No.: 54384

Robert M. Karton
Attorney for Opposer
Robert M. Karton, Ltd.
77 W. Washington St., Suite 900
Chicago, Illinois 60602-2804
(312)214-0900 telephone
(815)301-9114 facsimile

Date: December 19, 2007